

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

TONY FISHER,

Plaintiff,

v.

JORDAN HOLLINGSWORTH, et al.,

Defendants.

Civil Action No. 18-16793 (RBK) (AMD)

OPINION AND ORDER

KUGLER, District Judge:

Plaintiff Tony Fisher, also known as Kellie Rehanna, a prisoner confined at Elkton-Federal Correctional Institution, Elkton, Ohio, seeks to bring this civil action *in forma pauperis*, without prepayment of fees or security, asserting claims pursuant to 28 U.S.C. § 1331. Upon review of Plaintiff's application to proceed *in forma pauperis*, leave to proceed in this Court without prepayment of fees is authorized. *See* 28 U.S.C. § 1915.

Plaintiff also seeks leave to file an amended complaint on a piecemeal basis. Among other things, Plaintiff's amended complaint seeks to replace a Defendant in a number of paragraphs and ostensibly references, but fails to include, many of the numerous exhibits that were in the original complaint. Plaintiff should note that when a person files an amended complaint, it replaces all prior versions of the complaint, and the original complaint no longer performs any function in the case. *E.g., Wilson v. Martone*, No. 11-5337, 2012 WL 715319, at *5 (D.N.J. Mar. 5, 2012). While Plaintiff's amended complaint may certainly *specifically incorporate* facts and allegations in the original complaint, "the best course of action is to have Plaintiff file" an amended complaint that is complete in itself. *Id.*; *see, e.g., Mendez v. New Jersey State Lottery Comm'n*, No. 11-6932, 2012 WL 13034339, at *1 (D.N.J. Apr. 11, 2012).

Accordingly, the Court will grant in part Plaintiff's motion to file an amended complaint and direct Plaintiff to submit an all-inclusive amended complaint. This case is subject to *sua sponte* screening by the Court, upon receiving Plaintiff's all-inclusive amended complaint, the Court will screen the new pleading in due course.

IT IS this 15th day of January, 2019, hereby

ORDERED that Plaintiff's application to proceed *in forma pauperis* is hereby GRANTED; and it is further

ORDERED that Plaintiff's motion to file an amended complaint (ECF No. 5) is hereby GRANTED IN PART; and it is further

ORDERED that Plaintiff shall prepare and file a comprehensive proposed amended complaint, complete in all respects, within forty-five (45) days of this Order; and it is further

ORDERED that Plaintiff's request for the appointment of counsel (ECF No. 2) is TERMINATED without prejudice pending receipt of Plaintiff's amended pleading; and it is further

ORDERED that SUMMONS SHALL NOT ISSUE, at this time, as the Court's *sua sponte* screening has not yet been completed; and it is further

ORDERED that the time to serve process under FED. R. CIV. P. 4(m) is hereby extended to the date 90 days after the Court permits the pleading to proceed; and it is further

ORDERED that, pursuant to 28 U.S.C. § 1915(b) and for purposes of account deduction only, the Clerk shall serve a copy of this Order by regular mail upon the United States Attorney for the District of New Jersey and the warden of Elkton-Federal Correctional Institution; and it is further

ORDERED that Plaintiff is assessed a filing fee of \$350.00 and shall pay the entire filing fee in the manner set forth in this Order pursuant to 28 U.S.C. § 1915(b)(1) and (2), regardless of the outcome of the litigation, meaning that if the Court dismisses the case as a result of its *sua sponte* screening, or Plaintiff's case is otherwise administratively terminated or closed, § 1915 does not suspend installment payments of the filing fee or permit refund to the prisoner of the filing fee, or any part of it, that has already been paid; and it is further

ORDERED that pursuant to *Bruce v. Samuels*, 136 S. Ct. 627, 632 (2016), if Plaintiff owes fees for more than one court case, whether to a district or appellate court, under the Prison Litigation Reform Act (PLRA) provision governing the mandatory recoupment of filing fees, Plaintiff's monthly income is subject to a simultaneous, cumulative 20% deduction for each case a court has mandated a deduction under the PLRA; *i.e.*, Plaintiff would be subject to a 40% deduction if there are two such cases, a 60% deduction if there are three such cases, etc., until all fees have been paid in full; and it is further

ORDERED that pursuant to 28 U.S.C. § 1915(b)(2), in each month that the amount in Plaintiff's account exceeds \$10.00, the agency having custody of Plaintiff shall assess, deduct from Plaintiff's account, and forward to the Clerk of the Court payment equal to 20% of the preceding month's income credited to Plaintiff's account, in accordance with *Bruce*, until the \$350.00 filing fee is paid. Each payment shall reference the civil docket numbers of the actions to which the payment should be credited; and it is finally

ORDERED that the Clerk of the Court shall send a copy of this Opinion and Order to Plaintiff by regular U.S. mail.

s/Robert B. Kugler
ROBERT B. KUGLER
United States District Judge